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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,) No. CR 07-0568 MHP
14 Plaintiff,)
15 v.) JOINT MOTION AND REQUEST TO
16 MARK JACOBSON,) CONVERT SENTENCING HEARING TO
Defendant.) STATUS HEARING AND [PROPOSED]
17) ORDER

18 Pursuant to Criminal Local Rule 32-2, the United States and the defendant Mark

19 Jacobson jointly request that the sentencing hearing presently set for May 23, 2011, be converted
20 to a status hearing.

21 The defendant Mark Jacobson previously pled guilty pursuant to a plea agreement in
22 which he agreed to cooperate with the United States in its investigation and prosecution of other
23 individuals. It is now anticipated that Mr. Jacobson will testify at the trial of the defendant David
24 Nosal in United States v. David Nosal, CR 08-0237 MHP. The Nosal case is currently on appeal
25 before the Ninth Circuit. Regardless of the Ninth Circuit's disposition of the United States'
26 appeal in the Nosal matter, at least some charges alleged in the Nosal Indictment will proceed to
27 trial, and Mr. Jacobson will testify at that trial.
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JOINT MTN. & [PROPOSED] ORDER
CR 07-0568 MHP

1 Because Mr. Jacobson's cooperation with the government's investigation and prosecution
 2 of other individuals is not yet complete, the parties jointly request that the Court convert the
 3 scheduled sentencing date of May 23, 2011, to a status hearing. The specific bases of the parties'
 4 request are set out in more detail below.

5 **I. Delaying Sentencing In This Matter Will Benefit The United States And Will**
 6 **Potentially Benefit The Defendant.**

7 A defendant who requests a continuance of his sentencing hearing should be able to
 8 demonstrate that the government either desires or can benefit from his cooperation. *Cf. United*
9 States v. Urben-Potratz, 470 F.3d 740, 744 (8th Cir. 2006) (affirming denial of defendant's
 10 motion for continuance where defendant's additional cooperation would have required DEA to
 11 arrange an operation and approve defendant's participation in it and DEA "had already denied
 12 one such request").

13 In the present matter, Mr. Jacobson is cooperating with the government, and has been
 14 doing so since 2007. In the past, Mr. Jacobson has participated in meetings with government
 15 investigators regarding the facts and circumstances of the conspiracy charged in the Nosal case.
 16 It is anticipated that he will participate in additional meetings once the Nosal matter is set for
 17 trial. Mr. Jacobson's further cooperation in this case does not require special arrangements, but
 18 rather only the defendant's testimony in the trial of his co-conspirator Nosal.

19 In addition, Mr. Jacobson's active cooperation, through testimony against his
 20 co-conspirator Nosal, may significantly alter the United States' recommendation (if any) as to an
 21 appropriate sentencing reduction by enhancing the value of the defendant's cooperation "in the
 22 investigation or prosecution of another person who has committed an offense." United States
 23 Sentencing Commission, Guidelines Manual § 5K1.1, p.s., comment. (n.3).

24 Finally, because Mr. Jacobson will be required to testify at trial, his cooperation with the
 25 government's investigation is not yet complete. Pursuant to the terms of his plea agreement, Mr.
 26 Jacobson has agreed to request continuances of his sentencing date until his cooperation is
 27 completed. *See Plea Agrm.*, ¶ 9.e. Indeed, the parties' agreement anticipated that sentencing in
 28 this case would not proceed until Mr. Jacobson's cooperation was complete.

1 **II. Neither The Defendant Nor the Government Will Suffer Inconvenience.**

2 Neither the government nor the defendant will suffer inconvenience by converting the
 3 sentencing hearing to a status hearing. While the parties acknowledge that inconvenience to the
 4 Court or witnesses may be an important factor in a consideration of whether to continue a trial, it
 5 is less important in the case of a short hearing where no witnesses are called and where re-
 6 calendaring may be accomplished easily. *United States v. Flynt*, 756 F.2d 1352, 1360 (9th Cir.
 7 1985) (contempt hearing); *see also United States v. Rivera-Guerrero*, 426 F.3d 1130, 1141 (9th
 8 Cir. 2005) (hearing regarding anti-psychotic drug administration).

9 In fact, courts routinely grant requests to continue sentencing hearings for the purpose of
 10 cooperation. *See United States v. Ressam*, 629 F.3d 793, 811 & n.2 (9th Cir. 2010) (referencing
 11 multiple sentencing continuances to allow for cooperation with the government, including a
 12 nine-month continuance “to allow Ressam ‘the opportunity to fulfill the terms of his promised
 13 cooperation’”); *United States v. Myers*, 993 F.2d 713, 714 (9th Cir. 1993) (referencing “many”
 14 continuances of defendants’ sentencing hearing for purpose of substantial assistance).

15 In this case, a sentencing continuance should not present substantial inconvenience to the
 16 Court or to third parties and will not inconvenience the government or the defendant, and its
 17 timing can easily be assessed based on the progression of the government’s case against David
 18 Nosal. Converting the sentencing hearing to a status hearing will also provide the Probation
 19 Office with additional time to complete the presentence report in this (and related) cases, and will
 20 allow the parties to maintain their focus on Mr. Jacobson’s continuing cooperation.

21 **III. Conclusion.**

22 For all of these reasons, the parties jointly request that this Court convert the sentencing

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JOINT MTN. & [PROPOSED] ORDER

CR 07-0568 MHP

1 hearing presently set for May 23, 2011, to a status hearing.

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3 Respectfully submitted,

4 Dated: April 27, 2011

MELINDA HAAG
United States Attorney

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[PROPOSED] ORDER

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GOOD CAUSE APPEARING,

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IT IS ORDERED that the sentencing hearing presently set for May 23, 2011, be converted to a status hearing.

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Dated this 28th day April, 2011

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